IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.489 OF 2005

In

SUMMARY SUIT NO.1318 OF 2005

Meena Laxmichand Dedhia : Plaintiff

V/s.

M/s.Shanti Stores & Ors. : Defendants

...

Mr.Amit H. Yadav for the plaintiff.

Mr.D.M.Tailor for defendant nos.1, 2 & 4.

...

CORAM : S.J.VAZIFDAR, J.

December 6, 2005.

P.C.

1. The suit is filed to recover an amount of Rs.3,13,773.68 together with interest based on a writing titled "DEED OF RETIREMENT".

2. The plaintiff and the defendants were partners of defendant no.1 firm. By the said Deed of Retirement dated 31.3.2001, it was agreed that the plaintiff would retire from the said partnership firm. It was recorded that the said sum was found due and payable to the plaintiff at the foot of the account by the continuing

partner. Clause 6 of the agreement reads as under:-

> "6. That the continuing Partner agreed to pay a sum of Rs.3,13,773.68 to the retiring partner on or before 31st March, 2002 with interest at the rate of 18% per annum & after payment of the aforesaid amount nothing is payable by this continuing partners."

3. The defendants have alleged that in the said writing, the signatures have been forged. The defence appears to be untenable.

4. It was contended on behalf of the defendants that they had only signed a Draft Deed of Retirement and that the same contains blanks. Despite the request by the Court, the defendants did not furnish the draft Deed of Retirement. The mere fact, therefore, that in the original produced by the plaintiff, the figure has been filled in by hand does not indicate that the document is a forgery nor does it indicate that the draft deed was signed in blank. An adverse inference is justified against the defendants as a result of their refusal to furnish the draft deed.

5. It was then submitted that the deed is clearly fabricated as it is alleged to have been executed on 31.3.2001 whereas the stamp paper, is of 4.9.2001. Explanation in the plaint in this regard is satisfactory. The draft deed was prepared in March 2001 by the plaintiff's Tax Consultant. Some of the partners were not agreeable and advised the plaintiff to continue in the firm. Ultimately, it was agreed between the partners to execute the said agreement sometime in September 2001. The draft Deed was, therefore, copied verbatim on 4.9.2001. The draft Deed contains the date 31.3.2001. The final engrossed copy contains the same as a reproduction.

6. It is also pertinent to note that form 'E' under rule 4 of the Indian Partnership Act, 1932 indicating the notice of change of the constitution or dissolution of the firm was also signed by the defendants, though the same has not been filed.

7. In the circumstances, leave to defend granted to the defendants conditional upon the defendants depositing in this Court a sum of Rs.3,13,773.68 within eight weeks from today.

8. In the event the defendants deposit the aforesaid

amount, the suit to stand transferred to the list of Commercial Causes. The defendants to file their Written Statement within 30 days. Discovery and inspection within four weeks thereafter.

9. In the event the defendants fail to deposit the aforesaid amount, liberty to the plaintiff to apply for further orders.

10. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of two years and shall renew the same thereafter for a period of one year from time to time.

11. The Summons for Judgement stands disposed of accordingly.

S.J. VAZIFDAR, J.